

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

**JOSE I. GUZMAN,
Petitioner,**

V.

**WARDEN PAUL A. MORALES,
Respondent,**

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C.A. NO. C-06-119

MEMORANDUM AND RECOMMENDATION TO DISMISS

On March 13, 2006, petitioner filed a petition pursuant to 28 U.S.C. § 2254, complaining that he was denied his right to due process and equal protection at a disciplinary hearing where he was found guilty of assaulting an officer with a milk carton. (D.E. 1). Plaintiff was given thirty days to pay the \$5.00 filing fee or submit a completed application for leave to proceed *in forma pauperis* (D.E. 4). Petitioner failed to timely comply. On April 13, 2006, petitioner was ordered to show cause, within thirty days, why his complaint should not be dismissed for want of prosecution (D.E. 5). Petitioner responded to the show cause order, claiming that a TDCJ official had failed to submit the petition with the \$5.00 filing fee (D.E. 6). Petitioner was given an extension of time to pay the filing fee (D.E. 7). Petitioner failed to do so. A second show cause ordered was issued July 6, 2006 (D.E. 8). Petitioner failed to comply. It appears petitioner has abandoned any interest in pursuing this petition. Dismissal without prejudice is recommended.

In any event, a review of the dockets in the Corpus Christi Division reveals that petitioner filed a second petition identical to the instant petition on May 8, 2006. *See Guzman v. Quartermann*, No. 2:06cv193. The filing fee was paid and the case assigned to Hon. Janis G. Jack. Service of process was ordered and a recommendation of the magistrate judge to dismiss is pending. *Id.* Petitioner explained, in a letter he filed in this case, that he was sending another petition and the

filing fee (D.E. 6). Because a new petition arrived with the filing fee and without a cause number, the Clerk filed it as a new case. Petitioner's claims have been addressed in his later filed petition, and dismissal of the instant petition without prejudice is appropriate.

Respectfully submitted this 18th day of August, 2006.



B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **TEN (10) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to Fed. R. Civ. P. 72(b), 28 U.S.C. § 636(b)(1)(C) and Article IV, General Order No. 80-5, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within TEN (10) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglas v. United Services Auto Ass'n, 79 F.3d 1415 (1996) (en banc).